

Signed: January 17, 2003

Everett Wilson, Chief
Division of Environmental Quality
U. S. Fish and Wildlife Service
1849 C Street NW, 322 ARLSQ
Washington, DC 20240

Dear Mr. Wilson,

The Office of Pesticide Programs (OPP), U. S. Environmental Protection Agency (EPA), respectfully requests the initiation of Endangered Species Act (ESA) Section 7(a)(2) consultation on 33 listed plants¹ in California with respect to forestry use registrations by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for pesticides that contain the following ingredients: Atrazine, Imazapyr, Glyphosate, Hexazinone, Sulfometuron-methyl, Triclopyr butoxyethyl ester, Triclopyr triethylammonium, and 2,4-D ethylhexyl ester (hereinafter collectively referred to as "forestry herbicides").

In a previous request for consultation on these forestry herbicides, dated November 27, 2000, the Fish and Wildlife Service (Service) declined to consult, citing the scope of the action as being insufficient. Since that time, OPP has entered into a Consent Decree with the Californians for Alternatives to Toxics (CATs) regarding consultation on the subject forestry herbicides and these 33 plants. As a result, OPP and the Service have developed an agreement that the consultation on these forestry herbicides will be phased, with the issue of the subject 33 listed plants being the first phase. Subsequent phases will cover other species associated with the scope of the action, and a final Biological Opinion will be issued when all species are addressed.

These forestry herbicides are used in vegetation management in several ways. Top uses are for site preparation after timber harvest, conifer release in young regenerating forests, thinning to promote growth of remaining trees, and fuel reduction. In addition, they may be used to control vegetation in utility, railroad, and highway rights-of-way in forests. Only a tiny fraction (~0.02%) of forests are treated with herbicides in any year. If initially treated properly, it is unusual for a coniferous forest to be treated more than once in the 40-100 year

¹ The list of 33 plants actually comprises 35 taxa because two of the species each include two subspecies. The list is included as attachment 1.

cycle of timber production. EPA seeks the written concurrence of the Service, in accordance with 50 C.F.R. §402.13, with EPA's determination that these forestry herbicides are not likely to adversely affect the 33 listed plants in attachment 1. Additional information on these plants and their forest and forestry herbicide associations is provided in attachment 2.

The basis for our determination is conceptually simple: if these plants are protected from exposure to forestry herbicides, there will be no effect. The Department of Pesticide Regulation (DPR) in the California Environmental Protection Agency has developed bulletins for the protection of listed species from pesticides. The Service has had an opportunity to review these county bulletins when DPR, as a designated non-federal representative in accordance with 50 C.F.R. §402.08, requested informal consultation seeking the Service's concurrence that commercial and agricultural use (i.e., any but homeowner use) of the pesticides in accordance with these bulletins would be not likely to adversely affect the listed species in these bulletins. EPA has already requested technical assistance from the Service to determine all of the locations where the 33 plants occur. Additional information is required to ensure completeness.

We propose to continue working with the Service to ensure that any new locations are identified, and then to work with DPR to ensure that all locations are included in their bulletins and that the protective measures in the bulletins are applied to all of the subject forestry herbicides. At the same time, DPR will be working with California's Natural Diversity Data Base (NDDDB) to ensure that any other new locations are included in the program.

These bulletins have been in use for several years now. They are available to pesticide applicators through DPR's web site, through the County Agricultural Commissioners, and through various crop advisors and others. DPR has made extensive outreach efforts both in the development and implementation of these bulletins. DPR also has a requirement for comprehensive pesticide use reporting by any agricultural or commercial applicator. This use reporting includes very specific location information on where pesticides are used and how much is applied. We will request that the County Agricultural Commissioners who initially receive the pesticide use information check to ensure that these forestry herbicides have not been used in locations where listed plants may be exposed. While EPA cannot completely preclude unauthorized use of forestry herbicides, California's Agricultural Commissioner system and complete pesticide use reporting for forestry herbicides and other commercial pesticide applications should result at most in minimal use in inappropriate situations. Because most of the 33 plants in question do not occur in coniferous forests where these forestry herbicides are actually used, there is an even lower likelihood that such use in inappropriate situations would, indeed, expose one of these plants.

EPA is preparing to implement a final program involving the use of labeling and bulletins to provide protection for listed species. We issued a proposed program for public comment on December 2, 2002, with a comment period closing on March 3, 2003 (*Federal Register* 67(231), December 2, 2002, pages 71549-71561). Under this program, as proposed, labels of pesticides determined to potentially harm listed species would bear labeling requiring applicators of those pesticides to follow requirements in a county bulletin where they are applying the pesticide. Under this proposal, both the label requirement to follow the county bulletin and the specific requirements in the county bulletins would be enforceable under FIFRA.

EPA believes that nearly all agricultural and commercial applicators are following the California bulletins currently. Once EPA's implementation program becomes final, it will be a violation of FIFRA to apply pesticides in any way that is not consistent with the provisions of the labels and bulletins.

We note that California DPR has developed a new proposal that will allow for electronic matching of listed species' locations with areas where applicators would be using pesticides. Where a permit is required for use of a restricted use pesticide, this matching would allow for a permit to be issued that automatically includes any requirements to protect listed species, including areas where the pesticide cannot be used at all. At the same time, the applicator would not know which species is involved, nor would the location of the species be specifically revealed. This approach, termed PRESCRIBE, is still under consideration and funding is being sought to implement the approach.

Based upon the best available information and with the inclusion of the 33 species and the forestry herbicides in the DPR county bulletins, OPP has determined that the continued registration of the forestry uses of pesticides containing the active ingredients Atrazine, Imazapyr, Glyphosate, Hexazinone, Sulfometuron-methyl, Triclopyr butoxyethyl ester, Triclopyr triethylammonium, and 2,4-D ethylhexyl ester is not likely to adversely affect the 33 listed plant species in attachment 1. We request the Service's concurrence on OPP's not-likely-to-adversely-affect findings.

We would also like to take this opportunity to solicit any specific feedback you may have on these 33 plant species listed in attachment 1, with respect to ways that EPA may utilize its authorities to promote their recovery. Beyond our programmatic discussions, which should ultimately benefit these and other listed species, EPA seeks not only to ensure that these species are protected from any harmful pesticides, but also to contribute to public education and awareness wherever risks to them may occur. We also note that in addition to EPA's pesticide program, a number of other EPA programs should help promote the recovery of these and other listed species, including but not limited to Clean Water Act (CWA) grants, CWA water quality standard and permitting activities, and EPA's review of other federal

agencies' NEPA compliance.

We look forward to continuing our work with the Service to protect and help recover listed species. If you have any questions, please contact Larry Turner at (703) 305-5007.

Sincerely,

|s|

Arthur-Jean B. Williams, Chief
Environmental Field Branch
Field and External Affairs

Division (7506C)

Attachments

List of species

Memo on forestry herbicides